

# EXHIBIT C

HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY  
WAYNE BERRY v. HAWAIIAN EXPRESS SERVICE ET AL  
CIV NO CV03 00385 SOM LEK

**Thomas T. Ueno, CPA**

844 Queen Street  
Honolulu, Hawaii 96813

Fax 808 591-0813  
Phone 808 591-0441

December 27, 2005

Mr. Timothy Hogan, Esq.  
Lynch Ichida Thompson Kim & Hirota  
1132 Bishop Street, Suite 1405  
Honolulu, HI 96813

RE: Wayne Berry vs. Fleming Companies, INC., et al  
Civil No. CV03 00385 SOM-LEK (Copyright)

Mr. Hogan:

**OPINIONS**

I prepared these supplemental opinions based on new information that was made available to me. My supplemental opinions on matters relevant to this case and the basis and reasons for those opinions are described in Attachment A. I reserve the right to update my opinions as additional information becomes available.

**INFORMATION CONSIDERED**

In preparing this report and forming the opinions expressed in Attachment A, I have considered the items of information found in Fleming's "Logistics Data Org" Excel file. I have also considered my knowledge, training and professional experience as a professional accountant.

The information considered for this supplement was produced to me after the date of my deposition.

**QUALIFICATIONS**

A summary of my qualifications were presented in my original report as Attachment B.

**COMPENSATION**

Thomas Ueno is being compensated at our normal hourly rates for this type of work of \$285 per hour to \$325 per hour for deposition/testimony; manager at \$225 per hour, and professional staff at \$185 to \$195 per hour. Our compensation is not contingent on the outcome of this litigation.

**OTHER TESTIMONY**

The cases in which Thomas T. Ueno CPA has testified as an expert at trial or by deposition within the preceding four years are listed in my original report as Attachment C.



Thomas T. Ueno, CPA

**ATTACHMENT A**  
**Supplemental Opinions**

**Summary**

Based on the new information supplied to me, during the period April 1, 2003 through June 9, 2003, Fleming processed approximately 1,528 containers through the Berry Freight Control System.<sup>1</sup>

Mr. Berry is owed \$2,707,616 (\$1,772 license fee per container x 1,528 containers) in license fees for the containers Fleming shipped through his system during this period.

I used Fleming's file named "Logistics Data Org" as the data source, specifically columns F (Container ID) and I (Sail By), to approximate the number of containers shipped. My approximation includes all containers which sailed between April 1, 2003 and June 9, 2003.

**Total Invoices to 3<sup>rd</sup> Parties**

During the period April 1, 2003 through June 9, 2003, Fleming invoiced third parties such as KMArt, Foodland, and Conagra \$2,761,697.<sup>2</sup> The charges appear to be related to shipping containers and goods from the mainland United States to Hawaii.

I used Fleming's Excel file named "Logistics Data Org," worksheets "Orders" and "Invoices" as the data sources. I assumed that the data found in column A (Job ID) from "Orders" and column A (Order ID) from "Invoices" described the same items. That is the Job ID and Order ID referred to the same shipment and related charge. This assumption was confirmed by agreeing the weight and cube of the individual items across both worksheets.

The "Orders" worksheet did not contain any invoice amounts; and the "Invoices" worksheet contained no sail date information. By confirming that the Order ID and the Job ID tracked the same shipment, I was able to cross reference the two lists to determine the amounts invoiced during the April through June 2003 time period.

Of the \$2,761,697, \$1,592,755 appears to be charges related to freight forwarding services for various Hawaii retailers.<sup>3</sup> Included in those amounts are invoices to KMArt totaling \$767,934, and to Foodland totaling \$575,543.<sup>4</sup>

The remainder of the invoice amounts appears to be part of the shipping allowances earned by Fleming for taking ownership of goods on the mainland US as opposed to having manufacturers ship to Hawaii.

---

<sup>1</sup> Supplement Exhibit G

<sup>2</sup> Supplement Exhibit F

<sup>3</sup> Supplement Exhibit E

<sup>4</sup> Supplement Exhibit E

During this period (April 1, 2003 through June 9, 2003) Kinrich's report shows that Fleming Hawaii's Net Sales was \$55,120,183.<sup>5</sup>

#### **KMART Sales**

During the period April 1, 2003 and June 9, 2003, Fleming acted as a freight forwarder for KMART. Based on information found in Fleming's file "Logistics Data Org," during the above period, Fleming shipped 304 containers for KMART.<sup>6</sup>

#### **Foodland Sales**

During the period April 1, 2003 through June 9, 2003, Fleming acted as a freight forwarder for Foodland. Based on the information found in Fleming's file "Logistics Data Org," during the above period, Fleming shipped 386 containers for Foodland.<sup>7</sup>

---

<sup>5</sup> Supplement Exhibit H, Kinrich rebuttal report, Exhibit 5

<sup>6</sup> Supplement Exhibit A

<sup>7</sup> Supplement Exhibit C